

## **REMARKS/ARGUMENTS**

Claims 1-7, 11-17 and 21-27 are pending in the present application. Claims 1, 5, 15, 21 and 25 have been amended herewith. Reconsideration of the claims is respectfully requested.

### **I. 35 U.S.C. § 101**

Claims 21-27 stand rejected under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. This rejection is respectfully traversed.

Applicants have amended Claim 21 to recite that the computer readable medium is a computer readable storage medium in order to contrast such storage medium from a transmission-type medium.

Therefore, the rejection of Claims 21-27 under 35 U.S.C. § 101 has been overcome.

### **II. 35 U.S.C. § 103, Obviousness**

Claims 1-7, 11-17 and 21-27 stand rejected under 35 U.S.C. § 103 as being unpatentable over Daugherty et al. (U.S. Patent No. 6,345,292), hereinafter “Daugherty” in view of Smith et al. (U.S. Publication No. 2003/0167355), hereinafter “Smith”. This rejection is respectfully traversed.

With respect to Claim 1, such claim recites “performing, by the first computing device, a first determination for whether or not the request message has been processed by a second computing device that has a fragment-supporting cache management unit”. As can be seen, per this aspect of Claim 1, a determination is made as to whether or not the *request message* that was received by the first computing device *has been processed by a second computing device*. In rejecting such second computing device processing determination, the Examiner states that such determination is described by Daugherty at col. 6, lines 39-43. Applicants show that there, Daugherty states:

If a particular clip requested by the ISAPI 106 is not in the first-level cache 110, the cache 110 requests the clip from the second server 104. The second server 104 therefore populates the first-level cache with any of the clips not yet stored at the first-level cache.

As can be seen, while this cited passage does describe a ‘determination’ step, the ‘what’ that is determined is very different from the ‘what’ that is determined per Claim 1. Daugherty determines whether a particular requested clip ‘is not in the first-level cache’, whereas per the features of Claim 1 a determination is made as to whether the received request message ‘has been processed’ by a another (‘second’) computing device. A determination being made as to whether a clip exists in a local cache does not teach or suggest a determination being made as to whether a received message has been processed by another (second) computing device. Therefore, it is urged that Claim 1 has been erroneously rejected as a proper showing of prima facie obviousness has not been established by the Examiner.<sup>1</sup>

Further with respect to Claim 1, the Examiner alleges that Daugherty teaches “caching the fragment *based on the first determination*” (emphasis added by Applicants) at Daugherty col. 7, lines 20-25. Applicants urge that since Daugherty does not teach or suggest the ‘first determination’, as shown above, it cannot teach any caching of a fragment based upon such (missing) first determination, as alleged by the Examiner. Thus, it is further urged that Claim 1 has been erroneously rejected due to this additional claimed feature that is not taught or suggested by the cited references.

Further with respect to Claim 1, such claim recites “performing, by the first computing device, a third determination for whether or not to cache the fragment based on the first determination and the second determination”. As can be seen, this aspect of Claim 1 is directed to determining whether to cache a fragment, and such determination is based upon *two* other determinations ((1) whether the request message has been processed by a second computing device; (2) whether the fragment is to be cached). The Examiner expressly acknowledges that the cited Daugherty reference does not teach any type of caching determination (per the bottom of page 3 of the current Office Action dated 10/20/2008), but states that Smith teaches a cache-control directive that specifies whether or not to cache fragments at Smith paragraph [0669]).

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<sup>1</sup> In rejecting claims under 35 U.S.C. Section 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant. *Id.* If the examiner fails to establish a prima facie case, the rejection is improper and will be overturned. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In the absence of a proper *prima facie* case of obviousness, an applicant who complies with the other statutory requirements is entitled to a patent. *See In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

Even assuming arguendo that Smith teaches such a directive, such allegation does not establish a teaching of using *two* previous determinations ((1) whether the request message has been processed by a second computing device; (2) whether the fragment is to be cached) in making a *third* determination of whether to cache a fragment, as is provided by the features expressly recited in Claim 1. Thus, it is further urged that Claim 1 has been erroneously rejected due to this additional claimed feature that is not taught or suggested by the cited references.

Applicants initially traverse the rejection of Claims 2-7 for reasons given above with respect to Claim 1, as Claims 2-7 depend upon Claim 1.

Further with respect to Claim 2, such claim recites “wherein the first determination further comprises: retrieving from the request message a message header comprising a directive that indicates that the request message has been processed by a second computing device that has a fragment-supporting cache management unit”. As can be seen, Claim 2 is directed to further details of the ‘first determination’ step of Claim 1. Since none of the cited references teach the claimed ‘first determination’ step, as previously described, then none of the cited references teach the further details of the ‘first determination’ step that are recited in Claim 2. Thus, it is further urged that Claim 2 has been erroneously rejected due to this additional prima facie obviousness deficiency.

As further evidence that none of the cited references teach the features of Claim 2, the Examiner alleges that Smith teaches all of the features of Claim 2 since Smith teaches the request message processing determination by a second computing device at Smith paragraph [0669].

Applicants show that there, Smith states:

[0669] Sets the Cache-Control: no-cache header. Without a field name, the directive applies to the entire request and a shared (proxy server) cache must force a successful revalidation with the origin Web server before satisfying the request. With a field name, the directive applies only to the named field; the rest of the response may be supplied from a shared cache.

As can be seen, this cited passage describes various aspects of a cache directive that turns caching off. Such no-cache directive does not perform any determination as to *whether a request message has been processed by a second computing device*, as per the features of Claim 1 in combination with dependent Claim 2. Thus, it is further shown that Claim 2 has been erroneously rejected due to this mischaracterization of the Smith teachings.

Further with respect to Claim 3, such claim recites “wherein the second determination further comprises: retrieving from the response message a message header comprising a directive that indicates that the fragment is not to be cached by the first computing device if the second computing device has a fragment-supporting cache management unit”. As can be seen, the features of Claim 3 are directed to a directive that indicates that the fragment is not to be cached by the first computing device if the second computing device has a fragment-supporting cache management unit. In rejecting Claim 3, the Examiner alleges that Smith teaches “a directive that indicates that the request message has been processed by a second computing device” (see top of page 5 of the current Office Action dated 10/20/2008). Applicants urge error, as Claim 2 – and not Claim 3 – is directed to a request message processing directive. In contrast, Claim 3 is directed to a caching-based directive that indicates that the fragment is not to be cached by the first computing device if the second computing device has a fragment-supporting cache management unit. Due to the Examiner’s assertion that Smith teaches the features of Claim 2 in rejecting Claim 3, and yet Claim 3 recites different features than those recited in Claim 2, it is urged that Claim 3 has been erroneously rejected as the Examiner has failed to establish prima facie obviousness with respect to such claim.

Further with respect to Claim 4, such claim recites “wherein the response message comprises an HTTP (Hypertext Transport Protocol) Cache-Control header with a private directive”. As can be seen, the features of Claim 4 are directed to specifics pertaining to the *response* message. In rejecting Claim 4, the Examiner alleges that Smith teaches “a directive that indicates that the request message has been processed by a second computing device” (see middle of page 5 of the current Office Action dated 10/20/2008). Applicants urge error, as Claim 2 – and not Claim 4 – is directed to a *request* message processing directive. In contrast, Claim 4 is directed to specifics pertaining to the *response* message – including that such response message comprises an HTTP (Hypertext Transport Protocol) Cache-Control header with a private directive. Due to the Examiner’s assertion that Smith teaches the features of Claim 2 in rejecting Claim 4, and yet Claim 4 recites different features than those recited in Claim 2, it is urged that Claim 4 has been erroneously rejected as the Examiner has failed to establish prima facie obviousness with respect to such claim.

Further with respect to Claim 5, such claim recites “in response to the first determination being negative or the second determination being negative, storing the fragment in a cache

maintained by a cache management unit within the first computing device”. As can be seen, Claim 5 is directed to actions that occur in response to either of the ‘first determination’ and ‘second determination’ steps of Claim 1. Since Daugherty does not teach the claimed ‘first determination’ step, as previously described, and the Examiner admits that Daugherty does not teach the claimed ‘second determination’ step, then Daugherty cannot teach any actions any actions that occur *in response to* either of such (missing) ‘first determination’ and ‘second determination’ steps that are expressly recited in Claim 5. Thus, it is further urged that Claim 5 has been erroneously rejected due to this additional prima facie obviousness deficiency.

Applicants initially traverse the rejection of Claims 11-17 and 21-27 for similar reasons to those given above with respect to Claim 1.

Applicants further traverse the rejection of Claim 12 and 22 for similar reasons to the further reasons given above with respect to Claim 2.

Applicants further traverse the rejection of Claim 13 and 23 for similar reasons to the further reasons given above with respect to Claim 3.

Applicants further traverse the rejection of Claim 14 and 24 for similar reasons to the further reasons given above with respect to Claim 4.

Applicants further traverse the rejection of Claim 15 and 25 for similar reasons to the further reasons given above with respect to Claim 5.

Therefore, the rejection of Claims 1-7, 11-17 and 21-27 under 35 U.S.C. § 103 has been overcome.

### III. Conclusion

It is respectfully urged that the subject application is patentable over the cited references and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

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